

Message Text

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SUBJECT: INOUYE HEARING ON INWARD INVESTMENT

FOR ASSISTANT SECRETARY ENDERS

1. FOLLOWING IS OIA DRAFT OF YOUR STATEMENT BEFORE THE
INOUYE SUBCOMMITTEE ON APRIL 16 FOR YOUR REVIEW.

2. QUOTE: MR. CHAIRMAN: I APPRECIATE THIS OPPORTUNITY
TO PRESENT TO YOUR COMMITTEE THE ADMINISTRATION'S VIEWS

ON S.1303, S.995, AND S.329 RELATING TO FOREIGN INVEST-
MENT IN THE UNITED STATES. YOU AND THE OTHER MEMBERS OF
THIS COMMITTEE HAVE MADE AN IMPORTANT CONTRIBUTION TO THE
DEVELOPMENT OF U.S. POLICY IN THIS AREA. WE IN THE
ADMINISTRATION WERE PLEASED TO BE ABLE TO WORK WITH YOU
TOWARD THE ENACTMENT OF THE FOREIGN INVESTMENT STUDY ACT
LAST FALL. WE EXPECT THAT OUR CONSIDERATION OF THIS NEW
LEGISLATION WILL PROCEED IN THE SAME CONSTRUCTIVE AND
COOPERATIVE MANNER.

3. SINCE OTHER ADMINISTRATION WITNESSES ARE ADDRESSING
THEMSELVES TO THE TECHNICAL AND DOMESTIC ECONOMIC POLICY
ISSUES RAISED BY THESE THREE BILLS, I WILL DIRECT MY
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COMMENTS PRIMARILY TO THE FOREIGN POLICY ISSUES WHICH THEY
RAISE.

4. IT HAS LONG BEEN THE POLICY OF THE UNITED STATES

GOVERNMENT GENERALLY TO WELCOME FOREIGN INVESTMENT IN RECOGNITION OF THE BENEFITS WHICH IT BRINGS TO OUR ECONOMY. AT THE SAME TIME, BOTH THE LEGISLATIVE AND EXECUTIVE BRANCHES OF THE U.S. GOVERNMENT ARE AWARE OF THE NECESSITY TO TAKE WHATEVER MEASURES IN THE INVESTMENT FIELD ARE NECESSARY TO PROTECT OUR NATIONAL INTERESTS, RECOGNIZING, HOWEVER, THAT SUCH MEASURES MAY INVOLVE COSTS IN TERMS OF OUR OTHER OBJECTIVES. THUS, IN THE PAST, WE HAVE INSTITUTED RESTRICTIONS ON FOREIGN INVESTMENT ONLY IN THOSE AREAS OF THE ECONOMY WHERE IT WAS DETERMINED THAT THE NATIONAL INTEREST REQUIRED THEM.

5. AS YOU KNOW, MR. CHAIRMAN, THE EXECUTIVE BRANCH RECENTLY CONDUCTED AN EXTENSIVE REVIEW OF U.S. POLICY ON INWARD INVESTMENT IN WHICH WE EXAMINED THE ADEQUACY OF OF EXISTING SAFEGUARDS IN LIGHT OF, INTER ALIA, THE RAPID ACCUMULATION IN THE HANDS OF A FEW OIL PRODUCING GOVERNMENTS OF FUNDS AVAILABLE FOR INVESTMENT ABROAD. AS WAS EXPLAINED BY ADMINISTRATION WITNESSES BEFORE THE SENATE SUBCOMMITTEE ON SECURITIES ON MARCH 4, THE BASIC CONCLUSION OF OUR REVIEW WAS TO REAFFIRM THE TRADITIONAL COMMITMENT OF THE U.S. GOVERNMENT TO "NATIONAL TREATMENT" (I.E., TREATMENT EQUAL TO THAT WHICH IT ACCORDS TO ITS OWN CITIZENS IN LIKE CIRCUMSTANCES) FOR FOREIGN INVESTORS. IN ADDITION, HOWEVER, WE CONCLUDED THAT WE SHOULD TAKE THE FOLLOWING ADMINISTRATIVE ACTIONS TO GUARD AGAINST THE POTENTIAL PROBLEMS OF FOREIGN INVESTMENT IN THE UNITED STATES: (1) ESTABLISH A NEW HIGH-LEVEL INTER-AGENCY BODY TO SERVE AS A FOCAL POINT WITHIN THE EXECUTIVE BRANCH FOR INSURING THAT FOREIGN INVESTMENTS IN THE UNITED STATES ARE CONSISTENT WITH OUR NATIONAL INTERESTS; (2) CREATE A NEW OFFICE TO SERVE THAT BODY AND TO GATHER, CONSOLIDATE, AND REPORT ON INFORMATION ON FOREIGN INVESTMENT IN THE UNITED STATES WHICH IS COLLECTED BY THE VARIOUS AGENCIES OF THE U.S. GOVERNMENT; AND (3) SEEK ASSURANCES FROM THOSE FOREIGN GOVERNMENTS THAT ARE CAPABLE OF MAKING VERY SUBSTANTIAL INVESTMENTS THAT THEY LIMITED OFFICIAL USE
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WILL CONSULT WITH THE U.S. GOVERNMENT BEFORE MAKING MAJOR INVESTMENTS IN THE UNITED STATES.

6. AS THE REPRESENTATIVE OF THE TREASURY DEPARTMENT HAS

ALREADY INDICATED, WE ARE CURRENTLY TAKING STEPS TO INITIATE THIS NEW PROGRAM. THE ESTABLISHMENT OF AN INTER-AGENCY COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES AND AN OFFICE OF FOREIGN INVESTMENT IN THE UNITED STATES WILL BE ANNOUNCED IN THE NEAR FUTURE. IN ADDITION, WE HAVE ALREADY RECEIVED INDICATIONS FROM THE

PRINCIPAL OIL-PRODUCER GOVERNMENTS THAT THEY INTEND TO CONSULT WITH US IN ADVANCE OF ANY MAJOR INVESTMENTS IN THE UNTIED STATES, AS WAS DONE IN THE CASE OF THE PROSPECTIVE IRANIAN INVESTMENT IN PAN AM.

7. I WOULD LIKE TO REVIEW SEVERAL ADVANTAGES OF THIS ADMINISTRATION PROGRAM. FIRST, IT DOES NOT REPRESENT A DEPARTURE FROM TRADITIONAL POLICY ON INWARD INVESTMENT, AND HENCE IS UNLIKELY TO HAVE THE NEGATIVE EFFECTS UPON U.S. FOREIGN POLICY THAT NEW LEGISLATIVE RESTRICTIONS ON INWARD INVESTMENT MIGHT PRODUCE. THE UNITED STATES REMAINS A LEADER IN INTERNATIONAL ECONOMIC RELATIONS. OTHER NATIONS LOOK TO US TO PREVENT A RETURN TO THE DIVISIVE ECONOMIC NATIONALISM OF THE 1930S. IN THE PAST, THE UNITED STATES HAS FULFILLED THIS ROLE IN PART BY SEEKING ACCEPTANCE OF THE PRINCIPLE OF NON-RESTRICTIVE TREATMENT OF FOREIGN INVESTMENT THROUGH AN EXTENSIVE NETWORK OF BILATERAL FRIENDSHIP, COMMERCE AND NAVIGATION (FCN) TREATIES. IN ADDITION, THE UNITED STATES HAS PLAYED A KEY ROLE IN WINNING INTERNATIONAL SUPPORT FOR THE PRINCI-

PLES OF THE CODE OF LIBERALIZATION OF CAPITAL MOVEMENTS OF THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT. THIS CODE AND THE FCN TREATIES HAVE CONTRIBUTED TO THE ACHIEVEMENT OF A REGIME OF RELATIVELY UNRESTRICTED MOVEMENTS OF CAPITAL AMONG THE DEVELOPED NATIONS OF THE WORLD, A REGIME UNDER WHICH AMERICAN INVESTORS HAVE MADE INVESTMENTS IN FOREIGN COUNTRIES TOTALLING MORE THAN DOLS 100 BILLION IN BOOK VALUE. TODAY, AS WE CONSIDER
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NEW SAFEGUARDS FOR OUR OWN ECONOMY, WE MUST REMEMBER THAT THE COMMITMENT OF OTHER NATIONS TO LIBERALIZED TREATMENT OF FOREIGN INVESTMENT, IN SOME CASES NOT AS STRONG AS OUR OWN COMMITMENT, MAY WELL PROVE TO BE ALL TOO EASILY REVERSIBLE SHOULD THE UNITED STATES ABANDON ITS ROLE OF LEADERSHIP IN THIS AREA.

8. A SECOND ADVANTAGE OF THE ADMINISTRATION PROGRAM IS THAT IT PROVIDES US WITH AN EFFECTIVE CENTRAL AUTHORITY FOR THE FORMULATION AND IMPLEMENTATION OF A COHERENT INVESTMENT POLICY. PARTICULARLY IMPORTANT IN THIS REGARD, THE NEW MACHINERY WILL ACT AS A VEHICLE FOR THE COMPIRATION AND ANALYSIS OF DATA ON INWARD INVESTMENT CURRENTLY COLLECTED BY A NUMBER OF U.S. GOVERNMENT AGENCIES. WE ANTICIPATE THAT IN PERFORMING THESE FUNCTIONS, THE NEW OFFICE AND COMMITTEE WILL BE ABLE TO CORRECT MANY OF THE DEFICIENCIES OF CURRENT DATA COLLECTION PROGRAMS REVEALED IN THE RECENT CIEP-OMB REPORT. ON THE OTHER HAND, SHOULD CERTAIN SIGNIFICANT DEFICIENCIES PROVE INTRACTABLE USING

EXISTING POWERS, THE COMMITTEE WOULD MAKE RECOMMENDATIONS FOR NEW ADMINISTRATIVE OR LEGISLATIVE ACTION TO DEAL WITH THEM.

9. GIVEN THE ADVANTAGES WHICH WE SEE IN THIS NEW ADMINISTRATION PROGRAM, WE WOULD LIKE AN OPPORTUNITY TO PROVE ITS WORTH BEFORE AGAIN EXAMINING THE QUESTION OF WHETHER NEW LEGISLATION IS NECESSARY. THEREFORE, ALTHOUGH WE SHARE MOST OF THE CONCERNS OF THE SPONSORS OF S.1303, S.995, AND S.329, THE DEPARTMENT OF STATE CAN NOT SUPPORT THE PASSAGE OF THESE BILLS, AT LEAST UNTIL WE HAVE HAD THE OPPORTUNITY TO ASSESS THE EFFECTIVENESS OF THE ADMINISTRATION PROGRAM.

10. IN GIVING THE DEPARTMENT'S VIEWS OF THESE BILLS, I WILL ADDRESS MYSELF FIRST TO S.995 AND THEN, SINCE THEY ARE IN MANY RESPECTS QUITE SIMILAR, TO S.1303 AND S.329 TOGETHER.

11. S.995, THE FOREIGN GOVERNMENT INVESTMENT CONTROL ACT, WOULD IMPOSE BROAD NEW RESTRICTIONS UPON INVESTMENT IN THE UNITED STATES BY FOREIGN GOVERNMENTS AND GOVERNMENT LIMITED OFFICIAL USE
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ENTERPRISES. IT AIMS TO ACHIEVE BY LEGISLATION PART OF WHAT WE ARE SEEKING TO ACCOMPLISH THROUGH THE ADMINISTRATION PROGRAM. THERE ARE TWO MAJOR REASONS FOR OUR PREFERENCE FOR THE ADMINISTRATIVE APPROACH.

12. FIRST, A MANDATORY SCREENING REQUIREMENT OF THE KIND PROPOSED IN S.995 WOULD TEND TO CALL INTO QUESTION OUR COMMITMENT TO A POLICY OF NATIONAL TREATMENT FOR FOREIGN INVESTORS. BY AVOIDING MANDATORY SCREENING IN FAVOR OF A MORE FLEXIBLE APPROACH, WE ARE INDICATING THAT ALTHOUGH WE HAVE CONCERNS ABOUT INWARD INVESTMENT AND ARE ACTING UPON THEM, WE NEVERTHELESS WILL SEEK TO PRESERVE OUR OVERALL ADHERENCE TO THE NATIONAL TREATMENT PRINCIPLE. WE BELIEVE THAT THE ADMINISTRATION PROGRAM WILL PROVIDE A SATISFACTORY BALANCE BETWEEN OUR NEED TO PROTECT OUR NATIONAL SECURITY AND OUR INTEREST IN MINIMIZING THE BURDENS WHICH WE IMPOSE ON FOREIGN INVESTORS. IN ADDITION, IT WILL PERMIT US TO WELCOME ACCEPTABLE INVESTMENTS BY GOVERNMENTS IN A MANNER CONSISTENT WITH THE SPIRIT OF COOPERATION UPON WHICH WE ARE SEEKING TO BASE OUR OVERALL RELATIONS WITH THOSE COUNTRIES.

13. A SECOND PROBLEM OF S.995, RELATED TO THE FIRST, IS THAT IT WOULD VIOLATE THE NATIONAL TREATMENT PROVISION OF A NUMBER OF OUR BILATERAL FCN TREATIES. THESE TREATIES

ASSURE NATIONALS OF EACH OF THE PARTIES TO THE TREATY OF NON-DISCRIMINATORY TREATMENT WITH RESPECT TO THE ESTAB-

LISHMENT OR ACQUISITION OF INTERESTS IN ENTERPRISES IN THE TERRITORY OF THE OTHER PARTY. S.995 WOULD DEROGATE FROM THIS PRINCIPLE BY SUBJECTING FOREIGN GOVERNMENTS TO SPECIAL RESTRICTIONS NOT APPLIED TO DOMESTIC INVESTORS OR TO OTHER, NON-GOVERNMENTAL FOREIGN INVESTORS. THE ADMINISTRATION PROGRAM IS DESIGNED TO AVOID VIOLATING THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES, AND TO MAINTAIN THE INTEGRITY OF THESE TREATIES, WHICH ARE OF IMPORTANCE TO THE ACTIVITIES OF AMERICAN INVESTORS AND BUSINESSMEN ABROAD.

14. IN ADDITION TO THE TWO GENERAL PROBLEMS JUST MENTIONED, I WOULD ALSO MENTION THAT THE DEPARTMENT OF LIMITED OFFICIAL USE
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STATE QUESTIONS THE NEED FOR SECTION 3(C) OF S.995 WHICH IDENTIFIES AREAS OF THE ECONOMY IN WHICH FOREIGN GOVERNMENT INVESTMENTS ARE TO BE PROHIBITED. IT IS NOT CLEAR WHY THESE PARTICULAR AREAS WERE CHOSEN, ESPECIALLY SINCE WE ALREADY HAVE RESTRICTIONS ON FOREIGN INVESTMENT FROM ALL SOURCES IN A NUMBER OF THESE SECTORS.

15. I WILL NOW PRESENT THE VIEWS OF THE DEPARTMENT OF STATE CONCERNING S.1303 AND S.329. SINCE THESE TWO BILLS ARE PRIMARILY DESIGNED TO RESTRUCTURE AND EXTEND EXISTING PROCEDURES FOR GATHERING DATA ON INWARD INVESTMENT, THEIR FOREIGN POLICY IMPLICATIONS ARE RELATIVELY MINOR AND I WILL MAKE MY REMARKS VERY BRIEF.

16. FIRST, THE DEPARTMENT OF STATE IS CONCERNED THAT S.1303 AND S.329 WOULD IMPOSE ADDITIONAL REPORTING REQUIREMENTS WHERE WE MAY IN FACT ALREADY HAVE THE INFORMATION WHICH WE NEED OR ARE CAPABLE OF GETTING IT UNDER EXISTING REPORTING REQUIREMENTS. FOR EXAMPLE, BASED IN PART UPON THE FINDINGS OF THE CIEP-OMB STUDY, WE ARE ENCOURAGED BY THE POTENTIAL FOR OBTAINING INFORMATION ON MOST FOREIGN INVESTMENT IN THE UNITED STATES THROUGH IMPROVEMENT IN THE SECURITIES AND EXCHANGE COMMISSION REPORTING SYSTEM. IT WAS FOR THIS REASON THAT THE ADMINISTRATION LAST MONTH INDICATED A DESIRE TO EXAMINE MORE CLOSELY THOSE PROVISIONS OF S.425 DESIGNED TO OBTAIN INCREASED DISCLOSURE OF BENEFICIAL OWNERSHIP, MORE EFFECTIVE SANCTIONS TO ENSURE SUCH DISCLOSURE, AND IDENTIFICATION OF THE NATIONAL ORIGIN OF FOREIGN SHAREHOLDERS. WE UNDERSTAND THAT THE SEC HAS BEEN CONSULTING WITH THE SECURITIES SUBCOMMITTEE ON THESE QUESTIONS. IN THAT REGARD, WE WELCOME SEC'S PRACTICE OF COLLECTING NEEDED INFORMATION FROM INVESTORS ON A NON-DISCRIMINATORY BASIS, AND FIND THAT APPROACH PREFERABLE FROM A FOREIGN POLICY POINT OF VIEW TO PLACING SPECIAL REPORTING BURDENS

ON FOREIGN INVESTORS ONLY.

17. UNDER THE NEW ADMINISTRATION PROGRAM, AN OFFICE OF
FOREIGN INVESTMENT IN THE UNITED STATES GOVERNMENT WILL
BE ASSIGNED THE TASK OF GATHERING DATA ON INWARD INVEST-
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MENT BEING COLLECTED UNDER EXISTING PROGRAMS. THIS EFFORT,
TO BE CARRIED OUT IN CONJUNCTION WITH THE SECOND STAGE
OF THE CIEP-OMB STUDY, SHOULD PINPOINT ANY SERIOUS GAPS
IN THE DATA AVAILABLE TO US. SINCE EXCESSIVE REPORTING
REQUIREMENTS ARE COSTLY AND MAY THEMSELVES SERVE AS A
DETERRENT TO INVESTMENT, WE RECOMMEND THAT NEW ONES NOT
BE IMPOSED UNTIL THE EXISTING ONES HAVE BEEN FULLY
EVALUATED.

18. MY SECOND POINT RELATES TO SECTION 5(7) OF S.1303
UNDER WHICH THE PROPOSED ADMINISTRATION IS CALLED UPON
TO MAKE POLICY RECOMMENDATIONS DIRECTLY TO THE CONGRESS,
AND TO SECTION 7 UNDER WHICH THE SECRETARY OF COMMERCE IS
AUTHORIZED TO ISSUE GUIDELINES AND POLICY STATEMENTS
WITH RESPECT TO FOREIGN INVESTMENTS. IN VIEW OF THE FACT
THAT THE INWARD INVESTMENT ISSUE IS A BROAD ONE INVOLVING
CONCERNS OF MANY AGENCIES, WE FEEL THAT RESPONSIBILITY
FOR FORMULATING AND MAKING RECOMMENDATIONS CONCERNING
INWARD INVESTMENT POLICY SHOULD NOT BE GIVEN TO ANY ONE
DEPARTMENT. SUCH RESPONSIBILITY WOULD BETTER BE LODGED
WITH THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED
STATES, COMPRISING REPRESENTATIVES OF THE STATE, TREASURY,
DEFENSE, AND COMMERCE DEPARTMENTS (WITH OTHER
AGENCIES PARTICIPATING AS APPROPRIATE), CURRENTLY BEING
ESTABLISHED UNDER THE NEW ADMINISTRATION PROGRAM.

19. MR. CHAIRMAN, ALTHOUGH THE ADMINISTRATION CANNOT
SUPPORT PASSAGE OF THIS LEGISLATION AT THIS TIME, OUR
OPPOSITION IS FOUNDED LESS ON SUBSTANTIVE DISAGREEMENT
WITH THE BILLS THAN ON A DESIRE TO AVOID OVERREACTING TO
AN ISSUE WHICH WE ARE HOPEFUL CAN BE HANDLED WITH THE
RESOURCES ALREADY AT OUR DISPOSAL. IT IS REASSURING TO
FIND THAT THE SPONSORS OF S.995, S.1303 AND S.329 SHARE
OUR COMMITMENT TO THE PRINCIPLE OF FREEDOM OF INTER-
NATIONAL CAPITAL MOVEMENTS. IN CONCLUSION, I WOULD URGE
THAT WE SEEK TOGETHER TO PURSUE A COURSE OF ACTION THAT
WILL NOT ENDANGER THAT COMMITMENT. END QUOTE. KISSINGER

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